

In the Supreme Court of the State of Alaska

Richard L. Green,
Appellant,

v.

**State of Alaska, Department of
Health & Social Services, Office of
Children’s Services, as legal custodian
of Un-named Children 1-4 and Office
of Public Advocacy, as guardian ad
litem of Un-named Children 1-4,**

Appellees.

Supreme Court No. **S-18062**

Order

Date of Order: **June 8, 2021**

Trial Court Case Nos. **3PA-20-00568/569/570/571CI**

Richard L. Green filed several motions on June 4, 2021: (1) a motion to file an affidavit in support of his allegations of ineffective assistance of counsel by his court-appointed Public Defender Agency attorney in the underlying domestic violence protective order proceedings; (2) a motion for this court to order the Public Defender Agency to answer Mr. Green’s allegations of ineffective assistance of counsel set forth in his affidavit; (3) a motion for expedited consideration of the motion for the requested order to the Public Defender Agency to answer Mr. Green’s allegations of ineffective assistance of counsel in the underlying proceedings; and (4) an “emergency” motion to order the Public Defender Agency to produce to Mr. Green a digital copy of “all of the email communications, discovery and motions filed in [the underlying proceedings]. An individual justice has reviewed the motions and concluded that a response from the respondents and from the Public Defender Agency is not necessary to resolve these motions.

Mr. Green is advised that the supreme court is not a trial court. The supreme court is an appellate court and, with respect to its review of a final judgment in

the trial court, considers only the record created in the trial court and determines whether an appellant's assertions of error have merit, and, if so, whether the error(s) require a reversal or modification of the trial court's judgment or a remand for further proceedings consistent with the supreme court's decision. The supreme court generally does not consider evidence or arguments not presented to the trial court when resolving an appeal, and the supreme court generally does not order parties, or non-parties, to produce documents to an appeal party.

The parties to this appeal are the parties listed in the caption set forth above. The Public Defender Agency is not a party to this appeal. Mr. Green's assertions of legal error in the trial court's entry of a domestic violence protective order will be considered based solely on the trial court record in the underlying proceedings. To the extent Mr. Green asserts that he was provided ineffective assistance of counsel in the underlying proceedings, it is unclear whether the supreme court should consider that argument when Mr. Green did not seek to set aside the judgment on that basis under Alaska Civil Rule 60(b). The supreme court will, in child-in-need-of-aid cases, consider an appellant's ineffective-assistance-of-counsel argument on appeal of substantive decisions when that issue was not raised in the trial court;¹ but because the appellant has not created a separate trial court record focusing on counsel's actions and the reasons for

¹ See *Chloe W. v. State, Dep't of Health & Soc. Servs., Office of Children's Servs.*, 336 P. 3d 1258, 1266-67 (Alaska 2014) (explaining that supreme court will consider ineffective-assistance-of-counsel claim in child in need of aid appeal without remanding for trial court consideration). A copy of this decision is provided to Mr. Green with this order.

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them, it is difficult to prevail on the issue in a direct appeal of the underlying judgment.² The supreme court does not allow the appellant to create a new record in the supreme court for that issue. At the present time the supreme court nonetheless will assume the ineffective-assistance-of-counsel issue is properly before the court and will be considered based on the existing record created in the trial court.

With the foregoing in mind, **IT IS ORDERED** that Mr. Green's four motions identified above are **DENIED**.

Entered at the direction of an individual justice.

Clerk of the Appellate Courts



Ryan Montgomery-Sythe,
Chief Deputy Clerk

Distribution:

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² See *David S. v. State, Dep't of Health & Soc. Servs., Office of Children's Servs.*, 270 P.3d 767, 784-85 (Alaska 2012) (clarifying that in child-in-need-of-aid appeals prevailing on ineffective assistance of counsel claim requires meeting a two-part standard: first, establishing that representation was not competent; second, establishing that competent representation would have led to a different outcome). A copy of this decision is provided to Mr. Green with this order.